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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,620	12/24/2003	Aaron Golle	1748007US1	1482
21186	7590	06/05/2006	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			CARIASO, ALAN B	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/707,620	GOLLE ET AL.	
	Examiner	Art Unit	
	Alan Cariaso	2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 March 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2 and 6-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2 and 6-15 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20060301</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed March 20, 2006 is acknowledged. Claims 1, 2 and 6-15 are pending. Claims 1, 13 and 14 are amended. Claims 3-5 and 16-20 are canceled.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 6, 10-12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over FERNANDEZ (US 5,434,013) in view of MARTIN (US 5,025,351).

4. FERNANDEZ discloses a mud flap comprising a main body (82) and EL lighting (12) attached to the main body (82); the main body (82) has a left side or right side orientation (fig.5); wherein the EL lighting is a form of safety indicia (col.5, lines 15-34) that inherently denotes caution; wherein the EL blinks (at least by colors changes and being frequency sensitive to signals in col.4, lines 21-54); wherein the EL lighting includes at least two colors (col.4, lines 55-61); wherein the EL lighting has a first color in daylight (if the EL device is not activated, will have a some viewable hue from the given phosphor and ambient light) and a second color in the dark (if the EL device is activated and subject to at least a variety of changeable colors in col.4); further

comprising a layer (26,26a in fig.3, 60 in fig.4) over the EL lighting that changes the color of the EL lighting (col.4, lines 60-68; col.5, lines 6-15); A vehicle (10 fig.5) that includes at least one (82) of the mudflaps. However, FERNANDEZ does not disclose: the road safety indicia being recognized by the general public.

5. MARTIN teaches indicia (figs.3-6) formed by LED or EL-dot sources (12, 17, 19) on a rear-viewable surface of the splash guard (13) for the purpose of forming messages or symbols recognizable and viewable by the general public. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the EL-illuminated mud flap device of FERNANDEZ to include the type of recognizable indicia as taught by MARTIN in order to convey clear messages or symbols of safety or other messages to the general public.

6. In regards to the recitations "the mudflap is sized for a vehicle having at least two rear axles", "adapted to be attached from a first end of the mudflap to the vehicle and hang from the vehicle behind at least one tire of the vehicle, wherein the one tire is a rear-most tire on the vehicle", any recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, any of the lighted mud guards of FERNANDEZ and MARTIN are capable of hanged or sized or applied as recited.

7. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over FERNANDEZ (US 5,434,013) in view of MARTIN (US 5,025,351) and in further view of ISELER et al (DE 10108713 A1, included are English abstracts: DE 10108713 A1 and of Derwent 2002-659012).

8. FERNANDEZ discloses the claimed invention except: the EL lighting being red, green and yellow (claims 7-9).

9. ISELER teaches a battery (14, figs.1 or 3) accommodated in mudguards (6) constructed as a storage box for the purpose of operating the rear lighting fixture (15-fig.3 or see either English abstracts). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the EL-mudflap device of FERNANDEZ to include the type of battery attached to the mudflap or mudguard as taught by ISELER et al in order to best utilize available constructional space so as to proximately power the rear lighting fixture of mudflap.

10. As for the colored EL lighting of red, green and yellow, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the varying or multi-color EL-lighting device of FERNANDEZ to include colors of red, green and yellow, since it has been well-known in the art of lighting that produce various colors to include any colors known in the visible spectrum of ROYGBIV for visual display or at least colors of red, yellow and green that are well-known to be used for visual signaling and warning for traffic safety.

11. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over FERNANDEZ (US 5,434,013) in view of MARTIN (US 5,025,351) and in further view of PRICE (US 4,927,177).

12. FERNANDEZ discloses the claimed invention except: a kit comprising mudflaps having a left-handed orientation and a right-handed orientation; a kit comprising four mudflaps, two of which have left-handed orientation and two of which have right-handed orientation.

13. PRICE teaches a kit comprising at least a pair of left and right vehicle splash guards (42,44) for the purpose of facilitating packaging and installing/fitting at least a pair of right and left splash guards onto any of the front or rear pair-set of tire cavities of the vehicle. To have a kit of four or two pairs of left and right splash guards would be well known to facilitate installation of splash guards on both the front and rear pair-set of tire cavities. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the EL-mudflap device of FERNANDEZ to include the type of kit of at least a pair of right and left splash guards as taught by PRICE in order to facilitate packaging and installing with fitting of the pairs of right and left splash guards to both pair-sets of tire cavities so as to have a visual symmetry in displaying all four splash guards in a 4-wheeled vehicle.

Response to Arguments

14. Applicant's arguments with respect to claims 1, 2, 6-15 have been considered but are moot in view of the new ground(s) of rejection.

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15. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. DEGRAAF (US 6,778,077) and RUBOTTOM et al (US 5,497,675) show vehicles with more than 2 axles having displayed on the trailer and under the trailer illuminated safety indicia or messages. WILSON (US 2,758,401) shows rear mudguards with illuminated messages on the trailer/truck.

17.

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

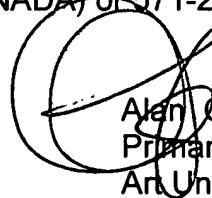
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alan Cariaso whose telephone number is (571) 272-2366. The examiner can normally be reached on 9-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alan Cariaso
Primary Examiner
Art Unit 2875

May 30, 2006
AC